

FILED

APR 18 2022

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA

2022 APR 18 PM 2:53

OFFICE OF THE CLERK

U.S. FORM A-10 To be used by a prisoner filing a complaint under the Civil Rights Act, 42 U.S.C. § 1983

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

Kirk D. Robinson

8:22cv151

(Enter above the full name of  
the plaintiff or plaintiffs  
in this action.)

v.

COMPLAINT

State of Nebraska

Omaha Correction Center Medical Clinic

Nebraska Department of Corrections

UCM Russell Vanlengen

UM Kevin Klippert

Unit Admin. Kurt Wees

(Enter above the full name of  
the defendant or defendants  
in this action, if known.)

(Note: If there is more than one plaintiff, a separate sheet  
should be attached giving the information in Parts I, II, and III  
for each plaintiff, by name. Remember, all plaintiffs must sign  
the complaint.)

I. A. Place of Present Confinement Omaha Correction Center

B. Parties to this civil action:

Please give your commitment name and any other name(s)  
you have used while incarcerated.

(1) Plaintiff Kirk D. Robinson Registr. No. 210550

Address P.O. Box 11099

Omaha, NE 68111

Additional plaintiff's Registr. No. and address:

(2) Defendant <sup>UCM Vanlenger, U.M. Klippert, Unit Admin Wees</sup>  
State of Nebraska

is employed as Staff at Omaha Correction Center

Additional defendant's employment:

## II. Previous Civil Actions

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☐ No ☒

(1) Title: \_\_\_\_\_  
(Plaintiff) (v.) (Defendant)

(2) Date filed \_\_\_\_\_

(3) Court where filed \_\_\_\_\_  
(specify if the court was state or federal and the level of the court)

(4) Court number and citation \_\_\_\_\_

(5) Name of judge to whom the case was assigned \_\_\_\_\_

(6) Basic claim made \_\_\_\_\_

(7) Date of disposition \_\_\_\_\_

(8) Disposition \_\_\_\_\_  
(pending) (on appeal) (resolved)

(9) If decided by the court, state whether for plaintiff or defendant \_\_\_\_\_

(10) Approximate date of filing \_\_\_\_\_

(11) Approximate date of judgment \_\_\_\_\_

For additional cases, provide the above information in the same format on a separate page.

B. Have you begun other cases in state or federal courts relating to the conditions of your treatment while in confinement? Yes X No    

### III. Grievance Procedure

- A. Does your institution have an administrative or grievance procedure? Yes X No
- B. Did you present the facts relating to your complaint through the administrative or grievance procedure? Yes X No
- C. What was the result? The response to the step 2 form was to not respond due to legal action.
- D. If you did not file a grievance, state the reasons \_\_\_\_\_
- E. Please attach any responses as exhibits to this complaint.
- F. If there is not prisoner grievance procedure at your institution, did you complain to prison authorities? Yes     No
- G. If your answer to F is yes,
- A. What steps did you take and what was the result? \_\_\_\_\_

### IV. Jurisdiction

A. Is this complaint brought for a violation of your federal constitutional rights by a person employed by the state, county, or municipal government or acting with such government officials? Yes X No    

If "yes," please state the agency the official(s) is/are employed by or why you believe the defendant(s) was/were acting in conjunction with government



officials: State of Nebraska - Department of  
Corrections

B. Is this complaint brought for a violation of state or local law? Yes ☒ No ☐

If so, please specify (without alleging any supporting facts) the state law(s) you believe was/were violated\_\_

Is/are the defendant(s) residents of the same state as you? Yes ☒ No ☐

If not, specify what state \_\_\_\_\_

V. Statement of Claim:

(State here as briefly as possible the **FACTS** of your case. You must state exactly what each defendant personally did, or failed to do, that resulted in harm to you, and describe the harm. Include the names of other persons involved (for example, other inmates), dates, and places of all events. If you allege related claims, number and set forth each claim in a separate paragraph. Attach an extra sheet, if necessary. Unrelated claims should be raised in a separate civil action. Do not give legal arguments or cite cases or statutes except in Part B below.

A. On November 1, 2021, I contacted, through an Inmate  
Interview Request, the medical facility at the Omaha  
Correction Center asking to be seen about conducting  
a sleep study for possible sleep apnea. I was not  
seen until December 1, 2021 for what amounted

to a 15 minute consultation so paperwork could be sent to the main office for approval. Between these dates, I contacted unit staff and the Ombudsmen off asking why it was taking so long. I received a letter of response from the ombudsmen's representative in January of 2022. During this time, I let the unit staff, in particular, UCM Vanlengen and UM Klippert know both verbally and through documentation that inmates I was living with were becoming agitated with me, that tensions were mounting. I requested several times to be moved to be separated from these individuals. (See continued Statement of Claim)

B. State briefly your legal theory or cite appropriate authority: I, the plaintiff, have a college degree in a medical related field. I have worked in hospitals and clinics and know how proper medical care should be provided. The defendants have a duty to provide <sup>an</sup> safe environment to keep me safe and to provide proper medical care. They failed to do so.

## VI. Relief

A. Do you request money damages? Yes X No     

If so,

1. Did you lose any money from this incident?  
Yes      No X If so, how much?
2. Did you receive a physical injury? Yes X No
3. What other harm did you experience from this incident? I am experiencing extreme anxiety, depression, and other mental health issues such as fear of crowds,



Continued Statement of Claim

I had heard threatening statements, insults, and even had items thrown at me while I was sleeping. ~~At~~ approximately the beginning of February or end of January, Aaron Gaynes through an object at me while I was sleeping. That morning, I wrote an emergency grievance about the incident and asking to be moved to a different unit. UCM Vanlengen told me verbally that he did not consider it life threatening and that it was not an emergency. I never did receive any copy or written response to that grievance. All UM Klippert and UCM Vanlengen advised me to do was tell my cellmates, "Welcome to prison."

On February 10, 2022, that facility locked down to do the 1100 count just before lunch. I was watching TV and fell asleep. I remember starting to wake up because I heard someone yelling. When I looked at the person yelling at me, it was my cellmate Nate Sandness. I don't remember what exactly I said but it was something about what he was yelling at me about. He then proceeded to run toward saying he was tired of my shouting and then attacked me. I received a black eye and a cut under my eye that bled profusely. Unit case worker Mines was on duty that day and luckily was looking through the door as this incident unfolded. He immediately came into the



cell and removed First Nate Sandness and then myself and called for an ERT at which time we were taken up front, I went to the medical clinic to have my wounds checked and Mr. Sandness was taken, I believe, to the lieutenant's office. Pictures were taken of my physical injuries and UCM Mines filed a misconduct report about the incident. Mr. Sandness received punishment for his actions and all charges against me were dropped.

On February 23, 2022, I received what I perceived as a threatening statement made about my well being by Aaron Goynes. I filed an emergency grievance. This time UCM Vanlengen had me come to the unit manager's office at 0600 on February 24, 2022. Both he and UCM Hensley were present. UCM Vanlengen proceeded to try and force me to go to protective custody. I did not request protective custody, I had requested to be moved to another unit. His comments such as "Which facility do I prefer, TSCI or LCC?" and "Let me know when you want protective custody, I'll be happy to sign the transfer paperwork for you!", led me to believe that if I was put into protective custody I would be transferred to another facility. Again, I did not request protective custody, just move me from the situation I'm in.



I had decided at that point, the unit staff was not going to be of any help. I started to try communicating directly with Unit Administrator Kurt Weer. My first two IIR's went unanswered because they were not returned. The third request was answered with I would need to be patient due to the facility being at capacity and the need to find a compatible cell. I waited approximately 2 weeks before sending a fourth IIR asking how much longer I would need to wait. It was unanswered by not being returned. I waited approximately 2 more weeks before sending a fifth IIR that was returned with the response that I could be put on an intra-unit waiting list and due to my sentence structure, unit J-2 would likely be where I was placed. I had enough. On approximately April, 7, 2022 I turned in a grievance of a sensitive nature. On April 11, 2022 I was finally moved to J-2.

I have been to see mental health about issues I am having that have arisen because of the attack on me and due to the fact that I have not had an uninterrupted night of sleep for at least 6 months. I am trying to see an actual psychiatrist through the institutions telepsych method but have been waiting several weeks now. All I am told is it is scheduled.



From November 1, 2021 to March 3, 2022, the date I finally received an A-PAP machine to help with my snoring or Obstructive Sleep Apnea. It was almost 5 weeks from when I first requested to be seen to when I was finally seen by the medical provider on December 1, 2021. Approximately 2 weeks later, I was informed that I had been approved for the test or sleep study. In January of 2022, I received a response from the representative of the Ombudsman's office that the Omaha Correction Center has only one device on hand to conduct a sleep study test. I finally was able to do the test towards the end of January, 2022, approximately 6 weeks after I was informed of the approval. The medical clinic received the results on either February 9, 10, or 11, 2022. I found this out 2 weeks later when UCM Vanlengen responded to my emergency grievance on February 24, 2022. I immediately sent an IIR demanding to be seen and to resolve this situation immediately before I was assaulted again. I finally received the A-PAP breathing machine on March 3, 2022 after having gotten the results on approximately February 26, 2022.

I continued to request to be moved because my cell mates, particularly Aaron Gaynes and Mike McNary, did not seem to understand that I needed time to get used to the machine. After several verbal,



written, and grievance requests, I was finally transferred to another unit.

I am making the following claims:

- 1- The medical staff of the clinic at the Omaha Correction Center failed in providing timely care that led to the assault by another inmate on me. It took almost 5 weeks to be seen initially for what amounted to a 15 minute consult. It was another 7-8 weeks before the sleep study was conducted. It took another 3-4 weeks before I was informed of the results and then another 1-2 weeks before I finally received the A-PAP breathing machine. I allege that if the medical staff would have done their job, I would not have been assaulted and would have received the A-PAP several weeks sooner.
- 2- The unit staff of the Omaha Correction Center were negligent by not moving me to another unit as I requested several times. Their only defense is that I signed a refusal to have protective custody, which I did not ask for and did not want. I was essentially forced to sign the refusal if I wanted to avoid being transferred to another facility.
- 3- I claim that the State of Nebraska has created ~~by~~ a dangerous situation by letting



prison system become overcrowded to the point that an inmate cannot be moved out of a situation because there is not a place for them to go. It is also dangerous for the fact that dangerous people are being housed with general population. Nate Sandness has served multiple sentences in prison and has a history of violence against other inmates. The Omaha Correction Center is at 190+% of its design capacity. The State of Nebraska has had several years, even decades, to fix this issue and has failed to do so. The State of Nebraska continuously delays ~~to~~ any attempt to fix the problem by waiting until the next year, the next legislative session, the next politician, etc... Nebraska has failed to keep or create a safe environment for the prison population and the staff of the correction department.

trauma, pain and suffering

4. State the amount of damages claimed Please see added page.

B. Do you request a jury trial? Yes ☒ No ☐

C. State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

I want the state court to hold the state accountable for what they have done. I want the court to recognize that I suffered physical and mental injuries. I want the court to award me all damages I am claiming. I want the court to recognize that I was more than patient and made every effort to do things the correct way.

VII. Request for Appointment of Counsel

A. Do you want an attorney to represent you in presenting your claim to the court? Yes ☒ No ☐

B. Did someone help you in preparing this complaint?  
Yes ☐ No ☒ If so, state the person's name (optional)

C. Have you made any efforts to contact a private lawyer to determine if he or she would represent you in this action? Yes ☐ No ☒

If so, state the name(s) and address(es) of each lawyer contacted I don't really have the ability to contact a lawyer

If not, state your reasons

I do not really have the ability to contact attorneys.

(Note: This court has no funds with which to pay an attorney for handling this type of case. Because of this, appointments are made only in cases where an attorney is greatly needed and the



## Relief claim

I have not been able to speak with a psychiatrist about the mental health issues I am having because of this entire incident. I will ask for monetary damages in the amount of 2.5 million dollars but reserve the right to increase based on any diagnosis from a mental health expert.

attorney is willing to take the case without expecting to receive any fee.)

I declare under penalty of perjury that the forgoing is true and correct.

Signed this 13<sup>th</sup> day of April, 2022.

Shirley D. Melvin

(Signature(s) of Plaintiff(s))



3B

3A11BCL

Robinson, Kirk #210550  
OCC

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

GRIEVANCE FORM

Step Two

Central Office Appeal

RESPONSE AND REASONS FOR DECISION REACHED

Inmate Name: Robinson, Kirk  
Inmate Number: #210550  
Date Received: 3-25-2022  
Grievance Number: 2022-1316  
Subject: medical/staff

NDCS will not be providing a response to this grievance as you state you are preparing litigation. You are encouraged to communicate any medical concerns with facility medical staff.

33022  
\_\_\_\_\_  
DATE

Brandon Dert  
\_\_\_\_\_  
DIRECTOR'S DESIGNEE

nf

## NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

## GRIEVANCE FORM

## Step Two

## CENTRAL OFFICE APPEAL

INSTRUCTIONS:  
TYPE OR USE BALL POINT  
PEN. IF MORE SPACE IS  
NEEDED, USE ATTACHMENT  
SHEET IN TRIPLICATE.

From:

Robinson, Kirk D.  
LAST NAME, FIRST, MIDDLE INITIAL

210550  
NO./GROUP

OCC J306 DL  
INSTITUTION

## \*Part A – REASON FOR APPEAL:

On February 10, 2022, I was assaulted by another inmate. Several factors led to this, none of which were my fault. Unit staff behavior and lack of help, medical's inability to complete the process in a timely manner, the overcrowding of the prison system, etc., all led to an unsafe situation that to the attack on me that resulted in physical, emotional, and mental injuries. I have a lot of documentation to support this claim and I am preparing to file suit against the state, department, facility, and staff for this situation. There is basically little to nothing that can be done or will be done by you to fix this, other than wait for my lawsuit.

3/24/22  
DATE

[Signature]  
SIGNATURE

\*THE COMPLETED INSTITUTIONAL GRIEVANCE FORM, INCLUDING THE CHIEF EXECUTIVE OFFICER'S/SUPERINTENDENT'S RESPONSE, MUST ACCOMPANY THIS APPEAL.

## Part B – RESPONSE AND REASONS FOR DECISION REACHED

3/30/22  
DATE

[Signature]  
DIRECTOR

ORIGINAL: TO BE RETURNED TO INMATE/STUDENT AFTER COMPLETION.



## NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

## GRIEVANCE FORM

## Step One

## CHIEF EXECUTIVE OFFICER

INSTRUCTIONS:  
TYPE OR USE BALL POINT  
PEN. IF MORE SPACE IS  
NEEDED, USE ATTACHMENT  
SHEET IN TRIPLICATE.

From: Robinson, Kirk D. 210550 OCC J3B606  
LAST NAME, FIRST, MIDDLE INITIAL NO. FACILITY/HOUSING UNIT

## Part A - INMATE REQUEST/CONCERN:

So medical had my test results the day before I was assaulted and I still didn't find out until the response to my grievance. That's good to know. What occurred on February 23 & 24, 2022 does not negate the fact that I was viciously assaulted on February 10, 2022, an act that UCM Vanlegen does not address in his response. I will never deal with UCM Vanlegen ever again. His behavior on the morning of Feb 24, 2022 was spiteful, a little vengeful, and downright unprofessional especially when he ended the conversation with "Let me know when you want protective custody, I'll be happy to sign the transfer paperwork for you." UCM Hansley was witness to it. I never requested protective custody, I said the other inmate is displaying threatening behavior and he and I need to be separated. Shirley  
3/6/2022  
DATE SIGNATURE OF REQUESTOR

## Part B - RESPONSE AND REASONS FOR DECISION REACHED

You raise three issues in your grievance: first, when medical notified you of your test results; second, that you were assaulted; third, UCM Van Lengen's behavior. Under Title 68 Nebraska Administrative Code - Nebraska Department of Correctional Services Rules and Regulations, Section 006, Subsection 006.03 an inmate may address only one issue on a formal grievance. Therefore, your grievance is being returned to you unanswered.

3/21/22  
DATE

Ed Fulkerson  
CHIEF EXECUTIVE OFFICER

ORIGINAL: TO BE RETURNED TO INMATE AFTER COMPLETION.

**NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES  
INFORMAL GRIEVANCE RESOLUTION FORM  
UNIT STAFF**

FROM: Robinson, Kirk D.  
Last Name, First, Middle Initial

210550  
Number

0CC/J3B60L  
Facility/Housing Unit

**PART A: Inmate Request/Concern.**

~~I have been going~~ On November 1, 2021, I started the process of getting testing for sleep apnea. It is now 4 months later and I have still not gotten any resolution. On February 10, 2022 I was physically assaulted by another inmate over the snoring situation. Now another inmate is pressuring me over it. I am going to file suit because medical has taken an inappropriate amount of time to resolve this, unit staff has done nothing to help me, the department of corrections is negligent in assuring my safety, and the state of Nebraska is responsible for creating an overcrowded prison system and taking no steps to correct the situation. I will be seeking monetary compensation for the stress, pain and suffering, and any possible mental health issues that have arisen because of this.

2/23/2022  
Date

[Signature]  
Signature

**PART B: Response and Reason(s) for Decision Reached.**

Mr. Robinson, you state in your grievance that you were threatened on 2/23/2022, due to your snoring. When interviewed by UCM Van Lengen and UCM Hensley you stated that you felt "threatened" by Inmate Goynes and when asked why, you stated that Inmate Goynes observed you looking in his locker, and that this occurred at 1000 on 2/23/2022. You waited to submit a "Emergency Grievance" in the institutional mail to inform staff of your fear, instead of notifying staff immediately. You were in UCM Van Lengen's Office at 1200 on 2/23/2022 and did not mention anything of a threat. UCM Van Lengen and UCM Hensley offered you Protective Custody due to your fear, which you "REFUSED" and signed an Inmate Refusal of Protective Custody. You are reminded that if you feel threatened at any time, notify staff immediately, DO NOT "use a grievance, or an IIR that may be delayed in getting a response. Furthermore, Medical informed UCM Van Lengen that you had a Sleep Apnea Test completed and completed for a second time on 2/4/2022. Medical received the results on 2/9/2022 and have forwarded to your provider.

2/24/2022 0730  
Date

[Signature]  
Signature

**NOTE:** A copy of this completed Informal Grievance Resolution Form must accompany any Step 1 Institutional Grievance Form.



Robinson, Kirk #210550  
OCC

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

GRIEVANCE FORM

J2D 07L

Step Two

Central Office Appeal

RESPONSE AND REASONS FOR DECISION REACHED

Inmate Name: Robinson, Kirk  
Inmate Number: #210550  
Date Received: 4-7-2022  
Grievance Number: 2022-2476  
Subject: filed as sensitive nature

You have not demonstrated how this is of a sensitive nature that cannot be addressed through the regular grievance process. As such this grievance is being returned unanswered. Cell assignments are determined consistent with policy and procedure at the discretion of designated facility staff. If you have concerns regarding your safety, you are encouraged to communicate specific and accurate information to your Unit staff.

Informal grievance #2021-9087 indicates you saw the provider on December 1, 2021. Informal grievance #2022-132 indicates you have seen the dentist on January 11, 2022. Step Two grievance #2022-1316 indicates you have been tested twice for sleep apnea and the latest results were forwarded to the provider on February 11, 2022. Step One grievance# 2022-1316 indicates you voiced safety concerns regarding your cellmate and were offered protective custody which you refused. An IIR to UA Wees regarding your wish to move from your current unit/cell was answered March 9, 2022, indicating your requested move was in the process of being accommodated however available space / suitable placement would take time.

DATE

04/08/2022

DIRECTOR'S DESIGNEE



nf



## NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

## GRIEVANCE FORM

## Step Two

## CENTRAL OFFICE APPEAL

INSTRUCTIONS:  
TYPE OR USE BALL POINT  
PEN. IF MORE SPACE IS  
NEEDED, USE ATTACHMENT  
SHEET IN TRIPLICATE.

From: Robinson Kirk D  
LAST NAME, FIRST, MIDDLE INITIAL

210550  
NO./GROUP

OCC  
INSTITUTION

## \*Part A – REASON FOR APPEAL:

I arrived at the Omaha Correction Center on September 1, 2021, since that time I have not had one single night of uninterrupted sleep. I have endured verbal and physical abuse. The overcrowded conditions are causing dangerous living conditions. I have not received the same level of medical care as I would have gotten if I were not incarcerated. I have verbally asked to be moved to a different unit, I have written IIR's to please be moved to a different unit and have received different answers and reasons why each time I have had enough. This entire situation has gone from indifference to outright negligence. To be clear, I am grieving the living conditions that I am in.

4/6/22  
DATE

[Signature]  
SIGNATURE

\*THE COMPLETED INSTITUTIONAL GRIEVANCE FORM, INCLUDING THE CHIEF EXECUTIVE OFFICER'S/SUPERINTENDENT'S RESPONSE, MUST ACCOMPANY THIS APPEAL.

## Part B – RESPONSE AND REASONS FOR DECISION REACHED

04/08/2022  
DATE

[Signature]  
DIRECTOR

ORIGINAL: TO BE RETURNED TO INMATE/STUDENT AFTER COMPLETION.



NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES  
INSTITUTIONAL CHECK

DATE 4/13/22 FAC. OCC H.U. J2D7L  
 PAYABLE TO 8<sup>th</sup> U.S. District Court \$ 350.00  
 ADDRESS 111 South 18<sup>th</sup> Plaza, Suite 1152, Omaha, NE 68102  
three hundred fifty dollars & 00/100 DOLLARS  
 I.D. # 210550 Kirk Robinson  
 Inmate (Print Name)  
 FOR Filing fee [Signature]  
 Inmate Signature

Relationship for Support

TRUST CK. # \_\_\_\_\_

WITNESSED

APPROVED

DCS-A-acc-010 (REV. 2-97)

FAC. OCC H.U. J2D7LDATE 4/13/22 \$ 350.00TO 8<sup>th</sup> U.S. District CourtKirk Robinson  
Inmate NameID # 210550 Date Posted \_\_\_\_\_Witnessed ColemanApproved Coleman

Trust Ck. # \_\_\_\_\_

RETURN Stub with check for processing.

Inmate Name Rick Robinson  
Inmate Number 10550  
Box 28900 11099 Omaha, NE 68111  
Lincoln, NE 68501  
Notice: This correspondence was mailed from the  
Nebraska State Penitentiary, Omaha Correctional Center  
its contents are unenclosed.



\*Legal Paperwork\*



**NOTICE**

This correspondence was mailed by an inmate  
confined in an institution operated by the  
Nebraska Department of Correctional Services  
its contents are unenclosed

8<sup>TH</sup> U.S. District Court  
Roman L. Hruska Federal Courthouse  
111 South 18th Plaza  
Suite 1152  
Omaha, NE 68102

RECEIVED  
APR 18 2022  
CLERK  
U.S. DISTRICT COURT